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In the

Supreme Court of the United States.

OCTOBER TERM, 1943.

No. 361

EDITH F. PERLEY,
Petitioner,

v.

FRANK W. ROBERTS ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

AND

BRIEF IN SUPPORT OF PETITION.

EDITH F. PERLEY,
Pro se.

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FRANK W. ROBERTS ET AL.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner respectfully submits the following petition for writ of certiorari and prays that the same may issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit entered on November 3, 1943, affirming the judgment of the District Court of the United States for the District of New Hampshire.

JURISDICTION.

The jurisdiction of the United States District Court rested upon the provisions of U. S. Code, Title 28, Sec. 41, ¶ 1.

Jurisdiction of the United States Circuit Court of Appeals rested upon the general appellate provision in U. S. Code, Title 28, Sec. 225, (a).

Jurisdiction to review this case exists under Judicial Code, Sec. 240 (a), as amended by Act of February 13, 1925, c. 229, s. 1; 43 Stat. 938; U. S. Code, Title 28, c. 9, s. 347.

JUDGMENT.

The date of entry of judgment in the case sought to be reviewed was November 3, 1943. The judgment was rendered by the Circuit Court of Appeals for the First Circuit (R. p. 105).

STATEMENT.

This is a suit brought by the plaintiff petitioner for malicious attachment on the plaintiff's real estate July 18, 1941.

The plaintiff's complaint alleged:

That the defendants, Atty. William N. Rogers, acting for his principal, the above-named Frank W. Roberts, on or about July 18, 1941, did maliciously attach the plaintiff's real estate in Effingham, Carroll County, New Hampshire, with no legal foundation for such action, which action was dismissed by the Court: Civil, 5316, May Term, Carroll County, 1942;

That said defendants have refused to give the plaintiff proper legal release of the said attachment for the record.

That said defendants have maliciously conspired and greatly harassed the plaintiff and have deprived her of the enjoyment and proper use and disposal of her property, and have trespassed upon her citizen's rights under the Federal Constitution and under the Constitution of the State of New Hampshire, to the protection of law, and to due process of law, and have done her great damage.

Wherefore, the plaintiff demands judgment against the above-named defendants in the sum of Ten Thousand Dollars and costs, and prays that the Court enjoin said defendants that they desist from further nuisance and molestation of the plaintiff's Constitutional Rights (R. p. 2).

POINTS TO BE URGED.

The Circuit Court of Appeals erred:

1. In its failure to take judicial notice of the fundamental principle of the institution of all legal actions that there must be a legal cause,—which is the primary point in issue in this case.

2. In its abandonment of the plaintiff's primary point in issue as argued in her brief before the Circuit Court of Appeals,—that there had accrued to the defendants no cause of action.

3. In their statement in the Opinion (page 103), "in which she (Miss Perley) *alleges* that the defendants in the action at law *for costs* referred to above", whereas Miss Perley *alleges* that the defendants attached her real estate "With no legal foundation for such action". Complaint (R. p. 2).

4. In their statement (Opinion p. 102) "—the order of the Superior Court with respect thereto still standing—", failing to take judicial notice that Judge Burque's order was not a *final judgment* for costs, and *no cause of action had accrued.*

5. In their statement (Opinion p. 102) "and *thereupon* the Superior Court, on the plaintiff's motion, dismissed the action for costs" whereas there was no *action for costs,*— there was no declaration when the attachment was made, and Miss Perley's two motions to dismiss were filed in October and December of the year before.

6. In their failure to take note that, as the record shows, there was *never a final judgment for costs,* and, therefore, the defendants' answer contained much matter "immaterial and impertinent". There was *no cause* found in said matter on which the defendants could base an action.

7. In their failure to note that only hearsay evidence was

given to link the attachment case with Equity 1880 (R. p. 15, "Have you").

8. In their failure to note that the law of New Hampshire does not provide that a *defendant in equity* may attach the plaintiff's property.

9. In their failure to note Miss Perley's exception to the linking of the attachment case with the equity case (R. p. 16), for the records show no final judgment for costs.

10. In holding that the Supreme Court's decision in sustaining the plaintiff's exceptions in *Perley* v. *Roberts,* 92 N. H. 135 dismissed the attachment case: Civil, 5316, *Roberts* v. *Perley.*

11. In their failure to consider the "punitive" measures taken by the defendants, contrary to law, to secure costs.

12. In their failure to find in this attachment case malicious abuse of process.

13. In affirming the judgment of the United States District Court of New Hampshire.

14. In the failure of His Honor, Judge Peter Woodbury, to use his judicial discretion to retire from sitting in the United States Circuit Court of Appeals for the First Circuit on this case 3910, *Perley* v. *Roberts et al.*

15. In the violation of Judicial Code, Sec. 240, by His Honor, Judge Peter Woodbury, as a "judge before whom a cause or question may have been tried or heard in a lower court is disqualified from sitting in the Circuit Court of Appeals on the hearing and decision of any questions in the same cause which involves in any degree matter on which he had occasion to pass in the lower court. 28 U.S.C.A. Sec. 216, note 3, *Moran* v. *Dillingham,* 174 U.S. 153.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. Justice has miscarried.

2. The violation of the Judicial Code which disqualifies a judge to sit in the Circuit Court of Appeals after passing judgment involved in a lower court. His Honor, Judge Peter Woodbury sat in the New Hampshire Supreme Court at the hearing on the plaintiff's appeal to that Court, 91 N.H. 254, *Perley* v. *Roberts,* Opinion p. 102 from the Superior Court decree in Equity 1880, Carroll, SS. *Perley* v. *Roberts,* the same case to which the same defendant and his attorney, defendants in this case, seek to link their attachment case: Civil 5316, *Roberts* v. *Perley.* The decision of the U. S. Circuit Court of Appeals in affirming the judgment of the U. S. District Court of New Hampshire is obviously biased toward the defendants and prejudiced against the plaintiff.

3. That the standard of the morale of the present judiciary be not impeached by the on-coming administrators of Justice.

The plaintiff respectfully submits the foregoing reasons, and prays that the petition for a writ of certiorari to the United States Circuit Court of Appeals shall be granted.

EDITH F. PERLEY, *Pro se.*

BRIEF IN SUPPORT OF THE PETITION

FOR WRIT OF CERTIORARI.

CHRONOLOGICAL STATEMENT OF THE CASE CIVIL, 5316, CARROLL COUNTY, 1941 FRANK W. ROBERTS v. EDITH F. PERLEY.

September 24, 1941, discovery by defendant (plaintiff-petitioner) of record of attachment in Registry of Deeds (R. p. 15).

September 30, 1941, certified copy of writ obtained by Miss Perley. Writ dated **July 15, 1941,** and attachment made **July 18, 1941,** having no specifications nor declaration,—nothing to show what the attachment was for—made returnable to the third Tuesday of **October, 1941** (R. p. 14, Dfs' Exh. A) *a void writ.*

October 23, 1941, Miss Perley filed her motion to dismiss "because the plaintiff has filed no specifications nor declaration with his writ and no service has been made on the defendant." (R. p. 15.) Photostatic copy of certified copy of motion herewith appended.

December 1, 1941, Miss Perley received amendment to the void writ and on same day process was served on the plaintiff (R. pp. 15, 52, Dfs' Exh. B).

December 5, 1941, Miss Perley filed her second motion to dismiss, not waiving her special appearance but insisting on it:

1. That said action was prematurely brought, because on July 15, 1941, the date on which their action was commenced, no right of action had accrued to the plaintiffs against this defendant, because no final judgment for costs in the prior case of *Perley* v. *Roberts,* Equity, No. 1880, had been entered.

2. The commencement of this writ by the plaintiff as above on the real estate of the defendant, and no attempt to serve process on the defendant, constituted a deliberate and malicious abuse of process, for which there is no justification under the laws of this State. Wherefore, the defendant moves that said action be dismissed and for her costs (R. p. 15, and photostatic copy of Clerk's certified copy of motion herewith appended).

May 19, 1942, Judge Blandin granted both motions (R. pp. 16 and 44 *Clerk's record,* also, photostatic copies of motions herewith appended).

June 26, 1942, Miss Perley finding that the attachment had not been discharged, wrote to Atty. Rogers suggesting that he discharge it (R. pp. 79, 80, Dfs' Exh. E).

July 30, 1942, letter from Robert C. Sawyer (Clerk), to Miss Perley, "that Mr. Rogers had assured him that as soon as he returned to his office he would do something about it" (R. pp. 79, 80, Dfs' Exh. F).

August 7, 1942, Miss Perley wrote to Atty. Rogers with enclosure of Massachusetts form of release (R. pp. 79, 80, Dfs' Exh. I).

August 8, 1942, Atty. Rogers' letter to Miss Perley enclosing release of attachment (R. p. 80, Dfs' Exh. H).

August 8, 1942, copy of Atty. Rogers' letter to Robert C. Sawyer, Clerk (R. p. 80, Dfs' Exh. G).

August 11, 1942, Miss Perley wrote to Atty. Rogers asking for acknowledged release (R. p. 80, Dfs' Exh. J).

September 2, 1942, Atty. Rogers letter to Miss Perley *in re* acknowledgment of release and costs (R. p. 80, Dfs' Exh. K).

September 3, 1942, Miss Perley's letter to Atty. Rogers asking him to look up the law *in re* acknowledgment (R. p. 80, Dfs' Exh. L).

PLAINTIFF'S EXHIBITS.

There is evidence that there was juggling with the plaintiff's exhibits, also, in this case before us, at the hearing before the U. S. District Court of New Hampshire (R. pp. 54, 55, 56). The defendant's letter of February 13, 1941, proves nothing to the credit of defendants, for that date is after the Superior Court's opinion was handed down *February 4, 1941* (R. p. 34). Clerk Shovan gave no record of exhibits while the case was pending: 91 N.H. 254.

Plaintiff's Exh. "1", in this case before us, was a blueprint map which the Clerk gave back to the plaintiff directly after the District Court hearing. The plaintiff's exhibit of the photostatic letter in the hands of the defendants' attorney was introduced after her Exhibit "3" (R. p. 71). Another plaintiff's exhibit is included with the defendants' exhibits, while another of her exhibits is missing. The plaintiff-petitioner avers that members of the jury were friendly with the defendant party. These manoeuvers were certainly unfair to the plaintiff.

ARGUMENT.

The Court sitting at the hearing on the plaintiff's appeal to the U. S. Circuit Court of Appeals was "virtually no Court at all". His Honor, Judge Peter Woodbury sat in the Court hearing on the plaintiff's first appeal to the Supreme Court of New Hampshire, from the judgment in the Equity case, 1880, *Perley* v. *Roberts,* spread on the record before us No. 3910. *William Cramp & Sons Ship & Engine Co.* v. *International Curtis Marine Turbine Co.,* 228 U.S. 645.

The Court of the U. S. Dist. Court of New Hampshire was biased toward the defendants and tranquilly accepted the defendant-attorney's practice for law, and hearsay evidence rather than the record of the Clerk (R. pp. 46, 68, 70, "affirmed by Judge Johnston" of which no record is given). The Court was prejudiced against the plaintiff. "The Court hasn't invited you to try your own case" (R. p. 63).

The attachment: Civil, 5316, Carroll County, 1941, *Roberts* v. *Perley,* was a malicious abuse of process. The attorney-defendant, William N. Rogers, formerly employed by the plaintiff, contrary to legal ethics, appears for the defendant, Frank W. Roberts (R. pp. 60, 61, 62). A case may be ruled as "stale", but a lawyer's mind has not been held so to be. This lawyer of a quarter-century experience (R. p. 68), and having "very extensive powers" (R. pp. 76, 77), contrary to his oath of office, conspired with his client to "try to get costs" from the plaintiff because she refused to abide by the findings of the Court—(her Constitutional Right)--putting his client to more expense, and used a method contrary to law governing the modification of a Court decree (R. pp. 46, 72, 73). So confident was he that he could "get costs", relying on his "extensive powers" and prestige in the judiciary, that he dared surreptitiously to institute an attachment on the plaintiff's real estate *when*

no cause of action had accrued,—his writ showing no cause of action,—a void writ. 6 Fed. Digest, key 127, *Cleveland & Western Coal Co.* v. *J. H. Hillman & Sons Co.,* 245 Fed. Reporter 200.

The defendants' motive was *prima facie* malicious, "punitive". The *non est* return was a farce. That no process was served on Miss Perley showed a malicious intention on the part of the defendants that she should not know till too late to defend herself. The telephone conference (R. p. 75) explains Atty. Rogers' intention. He *knew* the law relative to non-residents: Pub. Laws of New Hampshire, Ch. 331, Sec. 4. The amendment to the void writ and service of process forty days after the return day was a malicious procedure (R. p. 77) for a lawyer of long experience, for he *knew no cause of action had accrued.* At the hearing May 19, 1942 (R. p. 44), on Miss Perley's two motions to dismiss filed more than five months before, Atty. Rogers *knew* they were *granted on the merits of the case.* If it had been dismissed by some other action there was no need of a hearing before Judge Blandin. A month later, in June, at Miss Perley's suggestion, he refused to discharge the attachment, and with arrogant malice, ignored the Judge's order, although the Registry of Deeds in the Court House in Ossipee is only about ten miles from his home (R. p. 64), he confers with his friend Clerk of Court, "Bob" (R. pp. 51, 52, 53) to prolong the time till his return from his vacation in August before giving any form of release. Miss Perley asked for an acknowledged release, for the attachment was a malicious abuse of process, but he refused to give it (R. p. 69).

"Where proper acknowledgment or proof is made a prerequisite to valid recording, if an instrument is recorded without proper acknowledgement or proof, neither the record nor the record copy is admissible as primary evidence of the contents and execution of the instrument." The instrument in the case of *Montgomery* v. *Dorion,* 6 N.H. 250,

was a deed; the instrument in this case is a release of attach ment on real estate.

Atty. Rogers *knew* the legal effect of the recorded at tachment on the plaintiff's real estate and that the summe time for sale of such property was waning.

The malicious attachment is the history of "the las segment" of years of annoyance by the defendant Robert (R. p. 97) and the judgment of a biased Court licenses fu ther nuisance and molestation of the plaintiff's Constitu tional Rights.

(At the Clerk's suggestion (R. p. 82), Miss Perley entere by mistake as exhibits "7" and "8".)

The plaintiff-petitioner is not a lawyer and has studie only to protect her own interests in Equity 1880, agains the manoeuvers of the defendants who have the support o many years of study and experience in practice and Justic demands that she have the protection of an unbiased an competent Court.

Respectfully submitted,

EDITH F. PERLEY, *Pro s*

STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT
October Term, 1941

Frank W. Roberts

v.

Edith F. Perley

Defendant's Motion to Dismiss

And now comes the defendant, without waiving her special appearance, and moves that the said action be dismissed, because the plaintiff has filed no specifications nor declaration with his writ and no service has been made on the defendant.

Edith F. Perley

Per se

Civil #5316

Defendant's Motion to Dismiss

Filed Oct. 25, 1941
Attest:
Robert C. Sawyer, Clerk

May 19, 1942 Mo. granted.
Amos M. Blandin, Jr.
P.J.

A true copy attest:
Clerk

CARROLL, SS.

SUPERIOR COURT
OCTOBER TERM 1941

DEFENDANT'S MOTION FOR DISMISSAL

Now comes the defendant in the above entitled action, not waiving her special appearance, but insisting on it, and moves to dismiss said action, and assigns the following reasons:

1 That the said action was prematurely brought, because on July 15, 1941, the date on which this action was commenced, no right of action had accrued to the plaintiff against this defendant, because no final judgement for costs in the prior case of Perley v Roberts, Equity No. 1880 had been entered.

2 That the commencement of this suit by the plaintiff as above, on July 15, 1941, and that the attachment that was made on the real estate of the defendant, and no attempt to serve process on the defendant, constituted a deliberate and malicious abuse of process, for which there is no justification under the laws of this state. Wherefore the defendant moves that said action be dismissed and for her costs.

Edith F. Perler.

Civil #5316

Defendant's Motion for Dismissal

Filed Dec. 5, 1941
Attest:
Robert C. Sawyer,
Clerk

May 19, 1942 Mo. granted.
[illegible] Martin, Jr.
P.J.

[illegible] copy, attest:
[illegible]
Clerk